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12 *Attorneys for Plaintiff*

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 VALERIE D. WATSON-SMITH, AND ALL
17 OTHERS SIMILARLY SITUATED,

18 Plaintiff,

19 vs.

20 SPHERION PACIFIC WORKFORCE, LLC, and
DOES 1 through 100, inclusive,

21 Defendants.

) No. C07-05774

) **DECLARATION OF DANIEL H.**
) **QUALLS IN SUPPORT OF**
) **PLAINTIFF'S MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT OF MOTION FOR LEAVE**
) **TO FILE FIRST AMENDED**
) **COMPLAINT**

) **Date: October 3, 2008**

) **Time: 9:00 a.m.**

) **Courtroom: 2**

) **Judge: Honorable Jeffrey S. White**

23 I, Daniel H. Qualls, declare as follows:

24 1. I am an attorney at law, duly licensed to practice before all the courts of the State of
25 California, and am a Partner with the law firm of Qualls & Workman, L.L.P., attorneys of record
26
27
28

1 herein for Plaintiff Valerie D. Watson-Smith. The following is based on my personal knowledge,
2 and if called upon to do so, I could and would competently testify thereto.

3
4 2. On November 2, 2007, Watson-Smith sent by certified mail a Notice Of Violations
5 to the California Labor and Workforce Development Agency (LWDA) as required by section
6 2699.3(a)(1) of the PAGA. A true and correct copy of Plaintiff's November 2, 2007, letter is
7 attached hereto as Exhibit A.

8 3. On December 10, 2007, the LWDA informed Plaintiff that it did not intend to
9 investigate claims as set forth in the Notice Of Violations. Attached hereto as Exhibit B is a true
10 and correct copy of the LWDA's December 10, 2007 letter.

11 4. On April 2, 2008, Magistrate Brazil ordered Defendant Spherion to produce a
12 witness pursuant to Federal Rule of Civil Procedure (FRCP) 30(b)(6) regarding Spherion's meal
13 period policies and practices applied to California hourly employees during the proposed class
14 period and Spherion's meal period and compensation record keeping policies and practices. On
15 May 30, 2008, Spherion produced Spherion Human Resources Manager Joan Orzo (Orzo) as the
16 designated FRCP 30(6)(b) witness on the subjects of Spherion meal period policies and practices
17 and Spherion meal period and compensation record keeping policies and practices. A true and
18 correct copy of excerpts of Ms. Orzo's testimony are attached hereto as Exhibit C. Attached
19 hereto as Exhibit D is a true and correct copy of an exemplar of a Spherion electronic time record.

20 5. Attached hereto as Exhibit E is Plaintiff's proposed First Amended Complaint
21 (FAC). The proposed PAGA claim as set forth in the FAC does not give rise to new or difference
22 factual or legal issues because it is entirely derivative of existing wage and hour claims set forth in
23 Plaintiff's current Complaint.

24 6. Counsel for Defendant Spherion has informed me that Defendant does not oppose
25 Plaintiff's request for leave to add a PAGA claim, and so advised the Court at the Case
26 Management Conference held on June 20, 2008.

27 7. The proposed amendment to the definition of Class A, is not sought in bad faith,
28 and does not constitute an exercise in futility. The amendment sought to Class A seeks to more

1 narrowly define Class A class in light of workplace circumstances of putative class members, as
2 well as eliminate potentially disparate working conditions which may be claimed by Defendant
3 within a single class by formation of two related but distinct subclasses. The amendment in my
4 opinion will not cause undue prejudice to Spherion, as the amendment sought narrows the scope
5 of the existing proposed class, and is based upon the same facts and legal claims as Class A as
6 currently defined.

7 I declare under penalty of perjury that the foregoing is true and correct and that this
8 Declaration was executed July 28, 2008, in San Francisco, California.

9
10 /s/
11 DANIEL H. QUALLS
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EXHIBIT A



November 2, 2007

Our File No.: 3154.00

Via Certified Mail

Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Spherion Pacific Workforce, LLC
2050 Spectrum Boulevard
Fort Lauderdale, Florida 33309

Re: Notice Of Violations Of California Labor Code Sections 226, 226.7, 512, 588, 1194, and Pursuant To California Labor Code Section 2699 et.seq.

To Whom It May Concern:

Our offices have been retained by Valerie Watson-Smith. Ms. Watson-Smith is an employee of Spherion Pacific Workforce, LLC (Spherion). Ms. Watson-Smith contends that Spherion failed to pay her overtime for hours worked, and failed to provide her, and similarly situated Spherion employees, with rest and meal periods as prescribed by California Labor Code section 226.7, and compensation as a consequence pursuant to California Labor Code section 512. As a consequence of the aforementioned conduct and violations, Watson-Smith further contends that Spherion also failed to provide accurate wage statements to her, and Spherion employees similarly situated, in violation of California Labor Code section 226 and 1174. Said conduct, in addition to the forgoing, violates Labor Code §§ 201-204, 221, 224, 226, 226.7, 558, 1174, 1194, and each Labor Code section as set forth in California Labor Code section 2699.5.

This notice is provided to enable Ms. Watson-Smith to proceed with her complaint filed in the Alameda County Superior Court against Spherion as authorized by California Labor Code section 2695, et. seq.

Very truly yours,

QUALLS & WORKMAN, L.L.P.

A handwritten signature in black ink, appearing to read "Robin G. Workman".

Robin G. Workman

RGW/tmm

EXHIBIT B



Labor & Workforce Development Agency

Date December 10, 2007

Qualls & Workman
244 California Street, Suite 410
San Francisco, CA 94111

Spherion Pacific Workforce, LLC
2050 Spectrum Boulevard
Fort Lauderdale, Florida 33309

Re: LWDA No: 2856
Employer: Spherion Pacific Workforce, LLC
Employee: Valerie Watson-Smith

Dear Employer and Representative of the Employee:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked November 02, 2007 and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code". Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part".

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement.

Sincerely,

Robert A. Jones

Robert A. Jones
Deputy Secretary

Agricultural
Labor
Relations
Board

California
Unemployment
Insurance
Appeals
Board

California
Workforce
Investment
Board

Department of
Industrial
Relations

Economic
Strategy
Panel

Employment
Development
Department

Employment
Training
Panel

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VALERIE D. WATSON-SMITH, AND ALL)
OTHERS SIMILARLY SITUATED,)

Plaintiff,)

v.)

No. C07-05774

SPHERION PACIFIC WORKFORCE, LLC,)
and DOES 1 through 100,)
inclusive,)

Defendants.)

Deposition of JOAN L. ORZO, taken
on behalf of the Plaintiff, at
244 California Street, Suite 410,
San Francisco, California, commencing
at 9:03 a.m., Friday, May 30, 2008,
before Karen Moon, Certified Shorthand
Reporter No. 12450.

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1 responsive to the notice of depositions. The documents
2 that have been produced pertain to general Spherion
3 policies related to the topics identified.

4 We have objected to the breadth of the
5 discovery request to the extent they request Spherion to
6 go to each individual employer or entity to pull the
7 specific policies that may apply to individual work
8 employees at a very low level, if that makes any sense.

9 MR. QUALLS: Are any documents being withheld
10 under claim of objection or privilege in response to the
11 deposition notices marked to the record?

12 MR. SANDERSON: Again, we've produced
13 documents that are generally applicable to hourly
14 employees in California regarding meal breaks and
15 expense reimbursement. We haven't withheld any
16 documents on -- on privilege grounds.

17 BY MR. QUALLS

18 Q I'm going to be asking you a series of
19 questions in this examination regarding Spherion
20 employees. I mean by Spherion employees, Spherion
21 employees paid on an hourly basis, employed in
22 California since September 1st, 2003 to the present.

23 Understood?

24 A Understood.

25 MR. SANDERSON: And I may remind you of that

Page 20

1 every once in a while, just so we're clear.

2 THE WITNESS: Okay.

3 BY MR. QUALLS

4 Q Does Spherion keep records of meal period
5 breaks taken by Spherion employees?

6 A They should.

7 Q What kind of records are kept?

8 A Typically time sheets. Time sheets come in
9 two versions or could come in two versions. Manual or
10 electronic.

11 Q What employees -- withdraw the question.

12 Are manual time sheets -- withdraw the
13 question.

14 How long have manual time sheets for Spherion
15 employees been used?

16 A For as long as I've been with the
17 organization.

18 Q Since September -- since at least
19 September 1st, 2003 to the present?

20 A Yes.

21 Q Have they been in use that entire period of
22 time by some Spherion employees?

23 A Yes.

24 Q What is the form used for the time sheets?

25 A I'm not sure I understand.

Page 21

1 Q Is there a form used for time sheets to record
2 meal periods by Spherion employees?

3 A Yes.

4 Q What form is used?

5 A Again, paper for some. Some use time clocks.
6 Some use electronic means.

7 Q All right. Let's focus on the paper forms --

8 A Okay.

9 Q -- for now.

10 Has the format of the paper form used to
11 record meal periods changed from September 1st, 2003
12 until the present?

13 A It may have. I don't see time sheets
14 typically in my role.

15 Q Do you know if the form has changed or has
16 remained the same?

17 A I would have to guess.

18 Q You don't know?

19 A I don't know.

20 Q Once a Spherion employee uses a manual time
21 sheet to record time worked, what's the next person --
22 who's the next person that receives that time sheet?

23 A Our temporaries are instructed to send them to
24 the branch office for processing.

25 Q What is the next step in the process at the --

Page 22

1 withdraw the question.

2 What is the next step for a manual time sheet
3 once sent to a branch office?

4 A My understanding of the process is that the
5 branch will verify hours with the client to confirm
6 accuracy.

7 Q What's the next step in the process?

8 A Upon client confirmation of the hours
9 recorded, the branch personnel will process it into our
10 payroll system.

11 Q And how does that process work? Withdraw the
12 question.

13 What are the steps in that process?

14 A I don't have that level of access or
15 understanding.

16 Q By some process, branch personnel process time
17 record information to payroll; is that correct?

18 A Correct.

19 Q Is that done electronically?

20 A Yes.

21 Q Is the information recorded electronically?

22 A I don't know.

23 Q Who in payroll is responsible for receipt of
24 time sheet information processed by branch personnel?

25 A Payroll staff is divided up by -- by

Page 27

1 A -- in that regard?
 2 Q Yes, ma'am.
 3 A No.
 4 Q To your knowledge, when branch personnel
 5 process manual meal period records for Spherion
 6 employees, do they read the records to determine if the
 7 records depict meal periods not taken?
 8 A I -- I don't have any knowledge of that.
 9 Q To your knowledge, does that take place?
 10 A No.
 11 Q When branch managers -- excuse me. Withdraw
 12 the question.
 13 When branch personnel process manual time
 14 sheets for Spherion employees, is any effort made to
 15 determine if Spherion employees are entitled to an
 16 additional hour of compensation for missed meal breaks?
 17 MR. SANDERSON: Objection. Vague, ambiguous.
 18 Calls for a legal conclusion.
 19 BY MR. QUALLS
 20 Q You can answer.
 21 A If it's -- as people are processing time
 22 sheets, if they notice an employee is not taking a
 23 lunch, we would typically go back to the client and ask
 24 them why, to find out what took place there.
 25 Q And how do you know that happens?

Page 28

1 A I don't.
 2 Q You have no knowledge of whether or not that
 3 ever takes place; correct?
 4 A I don't have firsthand knowledge, no.
 5 Q Has anyone ever told you that that process
 6 takes place?
 7 A Yes.
 8 Q Who?
 9 A Managers will call, and they'll say that they
 10 have seen an employee that hasn't taken a lunch, and
 11 what should they do about that. I tell them they need
 12 to go back and find out why.
 13 Q In a circumstance where an employee has not
 14 taken a lunch, as depicted on a manual time sheet, is
 15 the employee paid an extra hour of compensation?
 16 A They're paid for the time that they worked.
 17 Q Are they paid an additional hour's
 18 compensation, where the meal period record depicts a
 19 meal period not taken?
 20 A I don't know.
 21 Q Have you ever instructed anyone at any time
 22 that employees for whom meal period records maintained
 23 manually or electronically depict a meal period not
 24 taken, they are to be paid an extra hour of
 25 compensation?

Page 29

1 A I've told managers that's a potential,
 2 depending upon the circumstances.
 3 Q Have you ever instructed anyone to pay an
 4 employee an extra hour of compensation for a meal period
 5 not taken as depicted on a meal period record?
 6 A I've never been asked that question. So no.
 7 Q To your knowledge, has Spherion ever paid an
 8 employee an additional hour of compensation where the
 9 employee's meal period record depicts a meal period not
 10 taken?
 11 MR. SANDERSON: Objection. Calls for
 12 speculation.
 13 BY MR. QUALLS
 14 Q You can answer.
 15 A I have no knowledge of that.
 16 Q To your knowledge, do pay statements provided
 17 to Spherion employees identify compensation paid for the
 18 absence of meal period breaks?
 19 MR. SANDERSON: Objection. Vague and
 20 ambiguous.
 21 Do you understand it?
 22 THE WITNESS: I do. I think I do. If I
 23 understand it correctly, you're asking if the pay
 24 statement that a temporary employee would receive would
 25 show where they were paid when they didn't take a meal

Page 30

1 break?
 2 BY MR. QUALLS
 3 Q Yes.
 4 A Is that correct?
 5 Q Yes.
 6 A I don't have that information. I don't know.
 7 Q Have you ever seen such a pay statement?
 8 A No.
 9 Q Has anyone ever told you that such a pay
 10 statement has ever existed?
 11 A No.
 12 MR. SANDERSON: Can I get clarification.
 13 Maybe I don't understand. Maybe I'm the only one.
 14 You're talking about a pay statement that would show the
 15 additional hour of compensation, not the time worked?
 16 MR. QUALLS: Or hours. Additional
 17 compensation for missed meal period breaks.
 18 MR. SANDERSON: In terms of -- the penalty
 19 wage; right?
 20 MR. QUALLS: Well, yes. We can quibble over
 21 what it is. But right. The compensation for a missed
 22 meal period break.
 23 MR. SANDERSON: That's how you understood it;
 24 right?
 25 THE WITNESS: That it would reflect that

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1 A Some.
 2 Q What percentage of staffing services employees
 3 work on customer sites?
 4 A Majority.
 5 Q More than 75 percent?
 6 A Probably.
 7 Q More than 85 percent?
 8 A I would guess.
 9 Q Would that be your best estimate?
 10 A Yes.
 11 Q Are Spherion supervising personnel physically
 12 present on-site when Spherion staffing personnel work on
 13 customer sites?
 14 A Sometimes.
 15 Q How frequently?
 16 A Depends on contractual terms. Volume of
 17 people assigned.
 18 Q I'm sorry. Say again?
 19 A It depends on contractual terms and the number
 20 of people that are assigned. There's a lot of variables
 21 that play into whether or not there's on-site presence.
 22 Q Some Spherion employees work on-site without
 23 the presence of Spherion supervisors; correct?
 24 A Correct.
 25 Q What percentage?

Page 40

1 A I have no idea. I mean...
 2 Q For Spherion employees who work on customer
 3 sites without the presence of Spherion supervisors --
 4 A Uh-huh.
 5 Q -- who schedules their meal breaks?
 6 A Branch personnel are the supervising entity of
 7 those people that work on-site. And flexible staff will
 8 typically follow the work schedules assigned by the
 9 client for client personnel.
 10 MR. QUALLS: Could you read back that
 11 response, please.
 12 (The deposition officer read back the answer
 13 as follows:
 14 "ANSWER: Branch personnel are the supervising
 15 entity of those people that work on-site. And flexible
 16 staff will typically follow the work schedules assigned
 17 by the client for client personnel.")
 18 BY MR. QUALLS
 19 Q What is flexible staff?
 20 A I was just going to say, internally we refer
 21 to temporaries as flexible staff. So when you talk
 22 about temporary personnel, that's -- we're talking the
 23 same thing. We're just using different terms, I think.
 24 Q All right. So temp personnel are referred to
 25 as flexible staff?

Page 41

1 A Correct.
 2 Q How many temporary personnel employees are
 3 there at Spherion currently?
 4 A I have no idea.
 5 Q More than a thousand?
 6 A Yes.
 7 MR. SANDERSON: In California?
 8 MR. QUALLS: I've been very careful in
 9 defining what I'm talking about here today.
 10 MR. SANDERSON: I'll say asked and answered,
 11 then, because it's the same question about temporary
 12 staffing.
 13 MR. QUALLS: I don't believe so.
 14 BY MR. QUALLS
 15 Q But nevertheless, so we're -- there's no
 16 mistake about your testimony, ma'am, I don't mean to ask
 17 questions repeatedly. I try very hard not to repeat my
 18 questions.
 19 MR. QUALLS: So could you read back my
 20 question, please.
 21 (The deposition officer read back the question
 22 as follows:
 23 "QUESTION: More than a thousand?")
 24 MR. QUALLS: I believe there was an answer to
 25 my question.

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1 (The deposition officer read back the answer
 2 as follows:
 3 "ANSWER: Yes.")
 4 BY MR. QUALLS
 5 Q More than 2,000?
 6 MR. SANDERSON: Objection. Asked and
 7 answered.
 8 THE WITNESS: I would say yes.
 9 BY MR. QUALLS
 10 Q More than 3,000?
 11 A Probably.
 12 Q More than 4,000?
 13 A I don't have the answer to that question.
 14 Q Now with respect to temporary personnel, is it
 15 your testimony that client or client personnel schedule
 16 their meal periods?
 17 A They provide work schedules to Spherion, and
 18 if meals are not included in that work schedule, we
 19 would ask the client to include them for our personnel.
 20 Q My question is more specific than that.
 21 A Uh-huh.
 22 Q Does client or client personnel schedule meal
 23 periods for temporary personnel?
 24 A No.
 25 Q Who schedules the meal periods?

<p style="text-align: right;">Page 95</p> <p>1 Spherion to Cisco can work for any of our business 2 units. 3 But to my knowledge, there is on-site presence 4 that would -- is that true? There is an on-site 5 presence at the account from Spherion. And therefore, 6 depending on who placed the person at the Cisco account, 7 they may or may not be managed directly by the branch. 8 BY MR. QUALLS 9 Q So it may or may not be the case that an 10 employee at the Cisco site was -- had time records 11 processed by branch personnel; is that correct? 12 A And you said could -- it's possible. Right? 13 Q It may or may not be the case; is that 14 correct? 15 A Correct. 16 Q In the event that a Spherion employee is 17 placed at the Cisco site and there is not a supervisor 18 on-site, that employee would have time records processed 19 by branch personnel; is that correct? 20 A In most circumstances, yes. 21 Q Let me turn your attention, ma'am, if I could, 22 to -- again, to Exhibit 5. Turning your attention to 23 page 12. 24 For Spherion employees who are working on-site 25 where Spherion supervisors are not present, it is the</p>	<p style="text-align: right;">Page 97</p> <p>1 agreement with contractual terms and what we've 2 communicated to the employee. 3 BY MR. QUALLS 4 Q And in circumstances where the client does not 5 provide meal periods to the employee, does Spherion pay 6 an additional hour of compensation for the lack of a 7 meal period? 8 MR. SANDERSON: Objection. Asked and 9 answered. 10 THE WITNESS: I've not given that instruction. 11 BY MR. QUALLS 12 Q Are you aware of anyone who's done so? 13 A I am not. 14 Q What does the client do on a day-to-day basis 15 to provide a Spherion employee with a meal period? 16 MR. SANDERSON: Objection. Vague and 17 ambiguous. And to the extent provide is the legal term, 18 calls for a legal conclusion. 19 BY MR. QUALLS 20 Q You can answer, ma'am. 21 A The client outlines the work schedule of our 22 employees on assignment. We communicate to them what 23 that should be. That includes the meal breaks. 24 We -- the employee takes that time as their meal period. 25 Q But my question is, what does the client do on</p>
<p style="text-align: right;">Page 96</p> <p>1 client who provides meal periods to the employee, meal 2 period -- meal periods to the employees on a day-to-day 3 basis; correct? 4 MR. SANDERSON: Objection. Vague. 5 THE WITNESS: Are you referring to the section 6 where it says punctuality for work? 7 BY MR. QUALLS 8 Q Yes. 9 A Punctuality at work? 10 Q Yes, ma'am. 11 A It would have been, as I mentioned before, 12 when we place people on the Cisco assignment, we would 13 outline for them their work schedule, which would 14 include a lunch break. 15 And so your question -- 16 MR. SANDERSON: Do you want to hear it again? 17 THE WITNESS: Yeah. I think I need to. 18 (The deposition officer read back the question 19 as follows: 20 "QUESTION: For Spherion employees who are 21 working on-site where Spherion supervisors are not 22 present, it is the client who provides meal periods to 23 the employee, meal period -- meal periods to the 24 employees on a day-to-day basis; correct?") 25 THE WITNESS: I'm going to say correct, in</p>	<p style="text-align: right;">Page 98</p> <p>1 a day-to-day basis to provide the meal period break 2 promised? 3 MR. SANDERSON: Objection. Overbroad. Same 4 objection as the last question. 5 BY MR. QUALLS 6 Q You can answer. 7 A They would not -- the client would not 8 interfere with our person's taking their lunch break. 9 Q Anything else? 10 A I can't think of anything. 11 Q Does the client do anything to affirmatively 12 provide the employee with a promised meal period? 13 MR. SANDERSON: Same objections. 14 THE WITNESS: Can you repeat the question for 15 me, please. 16 (The deposition officer read back the question 17 as follows: 18 "QUESTION: Does the client do anything to 19 affirmatively provide the employee with a promised meal 20 period?") 21 THE WITNESS: They would -- again, they 22 wouldn't interfere with them taking their lunch period. 23 They wouldn't require them to perform work during their 24 meal period. That's all I can think of. 25 BY MR. QUALLS</p>

EXHIBIT D

Weekly time record



Account Name:	Clisco Systems
Employee Name:	Valerie Watson-Smith

Week ending: 4/1/2007

****Time Card will calculate from Reg hours - Other, then give a total on each line**

Time Card will calculate from 8pg hours - Other, then give a total on each line						
	Date	Time In	Time Out			Total Hours Worked
	3/26/2007	8:30 AM	4:30PM	8:59		8:00
	3/27/2007	8:30AM	4:30PM	8:00		8:00
	3/28/2007	9:00AM	5:00PM	8:00		8:00
	3/29/2007	9:30 AM	5:30PM	8:00		8:00
	3/30/2007	8:30AM	4:30PM	8:00		8:00
	3/31/2007	n/a	n/a	n/a		n/a
	4/1/2007	n/a	n/a	n/a		n/a
TOTAL HOURS				7:00		7:00

EXHIBIT E

Daniel H. Qualls, Bar No. 109036
 Robin G. Workman, Bar No. 145810
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 San Francisco, CA 94111
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 Washington, D.C. 20009
 Telephone: (202) 742-7780
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Grant Morris, D.C. Bar No. 926253
LAW OFFICES OF GRANT E. MORRIS
 1666 Connecticut Avenue, N.W., Suite 310
 Washington, D.C. 20009
 Telephone: (202) 742-7783
 Facsimile: (202) 742-7776

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

VALERIE D. WATSON-SMITH, AND ALL
 OTHERS SIMILARLY SITUATED,

Plaintiff,

vs.

SPHERION PACIFIC WORKFORCE, LLC, and
 DOES 1 through 100, inclusive,

Defendants.

No. C07 05774

**[PROPOSED] FIRST AMENDED
 CLASS ACTION
 COMPLAINT**

Plaintiff Valerie D. Watson-Smith ("Watson-Smith") by her attorneys, brings this action on behalf of herself, all other persons similarly situated and the general public, and hereby alleges as follows:

PARTIES

1. Plaintiff Watson-Smith is a California resident and natural person.

2. Plaintiff is informed and believes and on that basis alleges that Spherion Pacific Workforce, LLC (Spherion and/or Defendant) is and at all times material herein mentioned was, a corporation doing business in the State of California and within the County of Alameda.

3. The names and capacities of defendants sued herein under California Code of Civil Procedure §474 as Does 1 through 100, inclusive, are presently not known to Plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this Complaint and include these Doe defendants' names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by Plaintiff, the members of the Class and the general public.

4. At all times mentioned in the causes of action alleged herein, each and every defendant was an agent and/or employee of each and every other defendant. In doing the things alleged in the causes of action stated herein, each and every defendant was acting within the course and scope of this agency or employment and was acting with the consent, permission and authorization of each of the remaining defendants. All actions of each defendant as alleged in the causes of action stated herein were ratified and approved by every other defendant or their officers or managing agents.

FACTS APPLICABLE TO ALL CLAIMS

5. Plaintiff incorporates herein by reference each and every allegation set forth in paragraphs 1 through 4 above.

6. This action alleges that Defendant failed to pay its California hourly employees compensation for work without meal break periods in violation of California Labor Code § 226.7 and applicable Industrial Welfare Commission Orders, failed to reimburse its California employees for work related travel expenses, and failed to pay its California employees overtime wages.

7. This action seeks relief for unremedied violations of California law, including, inter alia; damages, and/or restitution, as appropriate, to members of the Class, and to victims of the

1 practices at issue, who have not received compensation for labor provided without meal period
2 breaks, and who have failed to receive accurate itemized statements.

3 8. Watson-Smith is an adequate and proper class representative. Watson-Smith brings
4 this action in her individual capacity, on behalf of all others similarly situated, and, pursuant to
5 California Business & Professions Code §17204, on behalf of the general public. Plaintiff
6 Watson-Smith was and is employed by Spherion in California, within the four years preceding the
7 filing of this Complaint, and paid on an hourly basis. While employed by Spherion, Plaintiff
8 Watson-Smith was required to work without meal period breaks as defined and required by law.
9 Defendant failed to provide Watson-Smith, and all other similarly situated Spherion California
10 employees, with off-duty meal period breaks, compensation for the lack of said breaks, and failed
11 to provide Watson-Smith and all others similarly situated California employees with an accurate
12 itemized statement. While employed by Defendant, Plaintiff was and is required to incur
13 employment related expenses. Defendant failed to reimburse Plaintiff, and similarly situated
14 employees of Defendant, for employment-related expenditures. It was and is Defendant's policy
15 and practice to require out of workplace travel by persons employed in California, and fail to pay
16 reimbursement for mileage expenses by said employees. Defendant's policy and practice also
17 requires persons to use cellular phones to perform their jobs and fails to reimburse for expenses
18 incurred by said employees to use the cellular phones. Said policy and practice was uniformly
19 applied to Plaintiff and class members.

20 9. Defendants are, and at all relevant times were, employers under applicable
21 California Industrial Welfare Commission Orders.

22 10. This action seeks relief on behalf of a class of persons in the employ of Spherion in
23 California within four years preceding the filing of this complaint and the present comprised of:

24 Class A

25 Subclass 1

26
27 Persons paid on an hourly basis working on a customer site for whom Spherion
28 electronic time records depict a meal period not taken, and who did not receive a
compensation payment by Spherion for the lack of a meal period in said pay period.

Subclass 2

Persons paid on an hourly basis working on a customer site without the presence of a Spherion supervisor for whom Spherion time records depict a meal period not taken, and who did not receive a compensation payment by Spherion for the lack of a meal period in said pay period.

Class B

Persons for whom work duties included employee supplied vehicular travel;

Class C

Persons paid on an hourly basis placed by Spherion with Cisco Systems as recruiters.

11. The class is sufficiently numerous, since it is estimated to include approximately 2,000 or more Spherion employees geographically dispersed throughout California, the joinder of whom in one action is impracticable, and the disposition of whose claims in a class action will provide substantial benefits to both the parties and the Court.

12. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact common to the Class predominate over questions that may affect individual class members, including but not limited to the following:

- (a) whether Spherion implemented and engaged in a systematic practice whereby it unlawfully failed to provide hourly employees meal period breaks and failed to pay employees for the lack of meal breaks as required by law;
- (b) Whether it was and is Defendant's policy and practice to require out of office employee supplied automobile travel by persons employed in California, and fail to pay reimbursement for mileage expenses by said employees;
- (c) Whether it was and is Defendant's policy and practice to require employees to use cellular telephones and fail to pay reimbursement for cellular telephone expenses by said employees;

- 1 (d) Whether it was and is Defendant's policy and practice to require employees
2 who worked as recruiters and Spherion placed with Cisco Systems to work
3 in excess of 8 hours per day and 40 hours per week without overtime pay;
- 4 (d) whether Spherion implemented and engaged in a systematic practice
5 whereby it failed to provide accurate itemized statements to California
6 hourly employees;
- 7 (e) whether the systematic acts and practices of Spherion as alleged herein
8 violated, inter alia, applicable provisions of the California Labor Code,
9 including but not limited to, Sections 226, 226.7, 512, 2802, 1194, and
10 2698, and applicable Industrial Welfare Commission Orders, and California
11 Business & Professions Code § 17200, et seq.

12 13. Because Plaintiff worked on a daily and weekly basis, routinely worked through
13 meal breaks as depicted on Spherion records for which Plaintiff was not properly compensated,
14 was routinely required to incur mileage and cellular telephone expenses for which Plaintiff was
15 not reimbursed, routinely worked in excess of 8 hours per day and 40 hours per week without
16 overtime pay, and failed to receive timely and accurate itemized statements, Plaintiff is asserting
17 claims that are typical of the claims of the Class.

18 14. Plaintiff will fairly and adequately represent and protect the interests of the Class in
19 that he has no disabling conflict of interest that would be antagonistic to those of the other
20 members of the Class. Plaintiff has retained counsel who are competent and experienced in the
21 prosecution of class action wage and hour violations.

22 15. Because Plaintiff and the members of the Class have all similarly suffered
23 irreparable harm and damages as a result of Spherion's unlawful and continuously wrongful
24 conduct, including but not limited to Spherion's systematic failure to provide for meal period
25 breaks, and systematic failure to pay for meal break periods worked, class treatment is especially
26 appropriate. Because the hours worked and employment circumstances by Spherion employees
27 and class members follow common patterns, all of which are reflected in the records possessed by
28

1 Spherion, this action will provide substantial benefits to both. Absent this action, Spherion's
2 unlawful conduct will continue unremedied and uncorrected.

3 **FIRST CAUSE OF ACTION**

4 **(Failure To Provide Meal Period Breaks And Accurate Wage 5 Statements Pursuant To California Labor Code Sections 226, 226.7, 512)**

6 16. Plaintiff Watson-Smith hereby incorporates by reference the allegations contained
7 in paragraphs 1-15 of this Complaint as if fully set forth herein.

8 17. During all relevant periods, Defendant illegally and unlawfully required Plaintiff
9 Watson-Smith and class members to work through meal period breaks.

10 18. During all relevant periods, both the California Labor Code and the pertinent wage
11 orders required that Plaintiff Watson-Smith and class members be compensated for the absence of
12 meal period breaks. Spherion failed to compensate Plaintiff and class members for the lack of
13 meal periods as required by law. Plaintiff and class members are entitled to recover their unpaid
14 compensation arising there from.

15 19. By unlawfully requiring Plaintiff and class members to work without meal breaks
16 and in failing to properly compensate Plaintiff and class members for the lack of meal periods as
17 alleged herein, Spherion acted in willful, oppressive and conscious disregard of Plaintiff and class
18 members' statutory and regulatory right to meal periods and compensation.

19 20. Plaintiff and the other members of the class are therefore entitled to the relief
20 requested below.

21 **SECOND CAUSE OF ACTION**

22 **(Failure To Reimburse Employee Expenses Pursuant to Labor Code Section 2802)**

23 21. Plaintiff incorporates by reference the allegations contained in paragraphs 1-20 of
24 this Complaint as if fully set forth herein.

25 22. During all relevant periods, Defendant failed to reimburse Plaintiff and class
26 members for business related mileage and cellular telephone expenses. As a result, Defendant
27 failed to pay the Plaintiff and class members expense reimbursements owed by law. Plaintiff and
28 class members are entitled to recover their unpaid expenses and penalties arising there from.

1 23. Plaintiff and class members are therefore entitled to the relief requested below.

2 **THIRD CAUSE OF ACTION**

3 **(Failure To Pay Overtime Wages Pursuant to Labor Code Section 1194)**

4
5 19. Plaintiff repeats and re-alleges each and every allegation set forth in all of the
6 foregoing paragraphs as if fully set forth herein.

7 20. During all relevant periods, Defendant required Plaintiff and class members to
8 work shifts in excess of eight hours per day, and to work in excess of forty hours per week.

9 21. During all relevant periods, both the California Labor Code and the pertinent wage
10 orders required that all work performed by an employee in excess of eight hours in any workday,
11 on the seventh day of work in any workweek, or in excess of forty hours in any workweek be
12 compensated at one and one-half times the employee's regular rate of pay. Defendant failed to
13 compensate Plaintiff and class members for overtime hours they worked in excess of eight hours
14 in any workday or in excess of forty hours in any workweek, at one and one-half times a rate of
15 pay, based upon their regular rate of pay. As a result, Defendant's failed to pay Plaintiff and class
16 members earned overtime wages and failed to provide Plaintiff and Class members itemized
17 statements as required by California Labor Code Section 226. Plaintiff and class members are
18 entitled to recover their unpaid overtime compensation and liquidated damages arising there from.

19 22. Plaintiff and the other members of the class members are therefore entitled to the
20 relief requested below.

21 **FOURTH CAUSE OF ACTION**

22 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant**
23 **To Business & Professions Code Sections 17200, et seq.)**

24 24. Plaintiff and class members incorporate by reference the allegations contained in
25 paragraphs 1-23 of this Complaint as if fully set forth herein.

26 25. Business & Professions Code section 17200, et seq. prohibits acts of unfair
27 competition, which shall mean and include any "unlawful business act or practice."
28

1 26. The policies, acts and practices heretofore described were and are an unlawful
2 business act or practice because Spherion's failure to provide meal period breaks, failure to pay
3 compensation for work without meal period breaks, failure to reimburse for work related
4 expenses, failure to pay overtime wages, and failure to provide accurate and timely itemized
5 statements violates applicable Labor Code sections, including but not limited to California Labor
6 Code §§ 226, 226.7, 512, 1194, 2802, applicable Industrial Welfare Commission Wage Orders,
7 the Labor Code Private Attorney General Act of 2004, Labor Code Section 2698 et. seq. and other
8 provisions of California common and/or statutory law. Plaintiff reserves the right to allege
9 additional statutory and common law violations by Defendant. Such conduct is ongoing to this
10 date.

11 27. Business & Professions Code §17200, et seq. also prohibits acts of unfair
12 competition, which shall mean and include any "unfair business act or practice."

13 28. The policies, acts or practices described herein were and are an unfair business act
14 or practice because any justifications for Spherion's illegal and wrongful conduct were and are
15 vastly outweighed by the harm such conduct caused Plaintiff, class members, and the members of
16 the general public. Such conduct is ongoing to this date.

17 29. Plaintiff and the other members of the Class are therefore entitled to the relief
18 requested below.

19 **FIFTH CAUSE OF ACTION**

20 **(Labor Code Private Attorneys General Act of 2004: Labor Code Sec. 2698)**

21
22 30. Plaintiff incorporates by reference the allegations contained in paragraphs 1-29 of
23 this Complaint as if fully set forth herein.

24 31. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because Spherion's failure to provide meal period breaks, failure to pay
26 compensation for work without meal period breaks, and failure to provide accurate wage
27 statements to Plaintiff and class members violates applicable Labor Code sections and gives rise to
28 statutory penalties as a result of such conduct, including but not limited to penalties as provided by

1 Labor Code §§ 203, 226.3, 558, and 2699.5, and applicable Industrial Welfare Commission Wage
2 Orders. Plaintiff, as an aggrieved employee, hereby seeks recovery of civil penalties as prescribed
3 by the Labor Code Private Attorney General Act of 2004 on behalf of herself and other current
4 and former employees of Spherion against whom one or more of the violations of the Labor Code
5 was committed.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE Plaintiff prays for judgment and relief as follows:

- 9 1. An order certifying that the action may be maintained as a class action;
- 10 2. Compensatory and statutory damages, penalties and restitution, as appropriate and
11 available under each cause of action, in an amount to be proven at trial based on, inter alia, the
12 unpaid balance of compensation Defendant owes;
- 13 3. For punitive damages as appropriate and available under each cause of action;
- 14 4. An order enjoining Defendant from pursuing the policies, acts, and practices
15 complained of herein;
- 16 5. Costs of this suit;
- 17 6. Pre- and post-judgment interest; and,
- 18 7. Such other and further relief as the Court deems just and proper.

19
20 Date: July 28, 2008

QUALLS & WORKMAN, L.L.P.

21
22 By: _____

23 Daniel H. Qualls
24 Attorney for Plaintiff
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